APPENDIX A

Decision of the Tax Court

THE TAX COURT OF THE UNITED STATES
WASHINGTON

Docket No. 48119

ROBERT E. FUNKHOUSER and ELEANOR E. FUNKHOUSER, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Decision

Under written stipulation signed by counsel for the parties in the above-entitled proceeding and filed with the Court on November 16, 1954 at Washington, D. C., it is

ORDERED AND DECIDED: That for the year 1941 there are overpayments in income tax and 50% penalty in the respective amounts of $2,531.74 and $1,773.42 which amounts were paid after the mailing of the notice of deficiency, and that there is a deficiency in 5% penalty in the amount of $50.76 for said year;

That for the year 1942 there are overpayments in income tax and 50% penalty in the respective amounts of $5,137.07 and $5,775.94, which amounts were paid after the mailing of the notice of deficiency; that there is no deficiency in or overpayment of 25% penalty for said year; and that there is a deficiency in 5% penalty for said year of $429.86; and

That there are deficiencies in income tax and 50% penalty for years and in amounts as follows:

Year	Deficiencies Tax	50% Penalty
1943	$ 7,353.53	$3,676.77
1944	9,357.96	4,678.98
1945	13,740.49	6,870.25
1946	19,946.94	9,973.47
1947	14,842.56	7,421.28

(Signed) J. E. MURDOCK
Judge.

Enter: Entered Nov. 24, 1954

bwp

APPENDIX B

Decision of the Court Below

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7057.

Robert E. Funkhouser and Eleanor E. Funkhouser,
Petitioners,

versus

Commissioner of Internal Revenue,
Respondent.

On Petition to Review the Decision of The Tax Court of the United States.

(Argued October 17, 1955. Decided November 7, 1955.)

Before Parker, Chief Judge, Dobie, Circuit Judge, and Bryan, District Judge.

Robert E. Funkhouser, Pro Se, and Walter Akerman, Jr., Attorney, Department of Justice, (H. Brian Holland, Assistant Attorney General, and Ellis N. Slack, Attorney, Department of Justice, on brief) for Respondent.

Per Curiam:

This is a petition to review an order of the Tax Court refusing to vacate a prior judgment of that court. That

judgment was rendered by consent of counsel for taxpayer, who after a number of conferences with the representatives of the Commissioner of Internal Revenue had reached an agreement as to deficiencies in taxpayer's income tax liability for the years 1941 to 1947. Taxpayer contends that the deficiencies as evidenced by this agreement were not properly computed; but his counsel testified in the hearing before the Tax Court, on taxpayer's motion to vacate the order, that the agreement embodied the best settlement that they could obtain after lengthy negotiations, that they considered it in taxpayer's interest, that it was thoroughly explained to taxpayer and that he consented to it and authorized its entry. He did not deny this, but relied upon the financial pressure resulting from the jeopardy assessment and levy upon his property as grounds for relief from the judgment. There was no evidence of fraud or mistake in the settlement, however, and no ground upon which we would be justified in holding that the Tax Court abused its discretion in refusing to set aside the consent judgment. That judgment, so long as it stands, precludes re-examination of taxpayer's tax liability for the years in question.

Affirmed.

APPENDIX C

Order Granting Rehearing

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7057.

Robert E. Funkhouser and Eleanor E. Funkhouser,
Petitioners,

versus

Commissioner of Internal Revenue,
Respondent.

On Petition to Review the Decision of The Tax Court of the United States.

Order

In the above entitled case the petitioners having filed a petition for rehearing alleging that newly discovered evidence establishes that, in arriving at a settlement of the tax liability for the years in question, there was a mistake as to the amounts of taxes and penalties theretofore paid for those years and that this can be established by records of the government itself:

It is ordered that oral argument be had on the petition for rehearing addressed to the following questions:

(1) Does the alleged newly discovered evidence show error or mistake entitling petitioners to relief from the judgment appealed from?

(2) If so, is the matter one for disposition by this Court, or should the case be remanded to the Tax Court to

the end that that court may consider a motion for relief on the ground of newly discovered evidence?

It is further ordered that the petitioners be allowed 30 days from this date within which to file brief and that the government be allowed 30 days thereafter to file a reply brief thereto and that the oral argument be had at the March special term of this Court.

JOHN J. PARKER
Chief Judge, Fourth Circuit.

ARMISTEAD M. DOBIE
United States Circuit Judge.

ALBERT V. BRYAN
United States District Judge.

Filed Dec. 16, 1955

R. M. F. WILLIAMS, JR.
Clerk

A true copy,
Teste:

RICHARD M. F. WILLIAM, JR.,
Clerk of the United States Court of Appeals for the Fourth Circuit.

APPENDIX D

Judgment of Court Below Denying Rehearing

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7057.

Robert E. Funkhouser and Eleanor E. Funkhouser,
Petitioners,

versus

Commissioner of Internal Revenue,
Respondent.

On Petition to Review the Decision of The Tax Court of the United States.

On Petition of Petitioners for Rehearing.

(Argued March 21, 1956, Decided April 9, 1956.)

Before Parker, Chief Judge, Dobie, Circuit Judge, and Bryan, District Judge.

Robert E. Funkhouser, Pro Se, and Walter Akerman, Jr., Attorney, Department of Justice, (Charles K. Rice, Acting Assistant Atorney General, Lee A. Jackson and A. F. Prescott, Attorneys, Department of Justice, on brief) for Respondent.

Per Curiam:

A petition for rehearing filed in this case alleges that taxpayer had just discovered evidence to the effect that approximately $32,000 collected under a jeopardy assessment had not been properly credited on the judgment of the Tax Court. We ordered argument on the petition for the purpose of determining whether there was newly discovered evidence showing error or mistake entitling taxpayer to relief from the judgment appealed from, and whether the case should be remanded to the Tax Court for reconsideration in the light thereof. On the argument, it appears that, if there was mistake in crediting collections under the jeopardy assessment, this was not a mistake affecting the amount of the judgment from which appeal was taken. The Commissioner contends that the apparent discrepancy between the amount collected under the jeopardy assessment and the amount credited on the judgment is explained by the fact that part of the amount collected was used in the payment of interest for which taxpayer is liable but which is not dealt with in the judgment. The Commissioner admits, however, that there was an error in the computation of interest of approximately $1,000 for which he has tendered a refund to taxpayer.

As the crediting of collections under the jeopardy assessment is not a matter which could affect the amount of the consent judgment entered by the Tax Court, it is not a matter which would justify a rehearing of the cause. If taxpayer is entitled to any moneys collected under the jeopardy assessment which have not been properly credited against his tax liability, he has a remedy by suit therefor in a proper court, if they have not been refunded to him in the meantime.

Rehearing Denied.

Letters of Approval of Former Returns

The following letters from Respondent show that Respondent regularly made formal examinations of Petitioner's books, records and returns.

During the ten years immediately preceding this period he made seven such examinations. All satisfactory.

During all of this period, and for many years prior thereto Petitioners have owned and operated exactly the same kind of business and have had exactly the same kind of income and expenses, kept exactly the same kind of books and records, and reported all income and all expenses in exactly the same way.

Petitioners took those books and records to Respondent's office and Respondent's agents computed the net taxable income and the taxes to be reported for each of the years 1931-1947.

The following letters show that Respondent found the records complete, and satisfactory, and his testimony quoted in pages that follow shows that he found all income and all expenses reported, and that exactly the same kind of books and records were kept throughout the entire period.

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

1002 Int'l Revenue Bldg.,
Waslington, D. C.
Juy 8th, 1933

Office of Deputy Collector
District:
Maryland

Mr. Robert E. Funkhouser,
5315 Colorado Avenue, N. W.,
Washington, D. C.

Dear Sir:

Enclosed herewith is copy of report of Deputy Collector Joseph Stearns, dated July 8, 1933, covering his investigation of your income tax liability for the year 1931, and showing corrected tax liability of $8.37, plus interest of 67 cents.

Copy of this report is furnished for your information only. Payment is to be made upon receipt of a bill for tax due from the Collector of Internal Revenue, Baltimore, Maryland.

Very truly yours,

CLARENCE C. KEISER
Acting Ass't Chief Field Deputy

M G D
Enclosures

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Baltimore, Md.
October 25, 1934.

Office of the Collector
District of Maryland
In Reply Refer to

Mr. Robert E. Funkhouser,
5315 Colorado Ave., N. W.,
Washington, D. C.

Dear Sir:

Enclosed herewith is report of Deputy Collector Joseph Stearns, dated October 2, 1934, covering his investigation of your income tax return for the year 1932, disclosing an additional assessment in the amount of $45.17, which is recommended by this office.

Respectfully,

A. PARKER RASIN
Chief Field Deputy.

CAZ.
Encl.

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Washington, D. C.

Office of Deputy Collector
District of Maryland

1002 Internal Revenue Building,
Washington, D. C.
July 7, 1936.

Mr. Robert E. Funkhouser,
5315 Colorado Avenue, N. W.,
Washington, D. C.

Dear Mr. Funkhouser:

Your Income Tax Return for the year 1934 has been referred to me for audit from the Baltimore office. If you will let me know when you can be at this office, I will be pleased to arrange an appointment to suit your convenience. My telephone number is National 1516.

Respectfully,

JOSEPH STEARNS
Joseph Stearns
Deputy Collector

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Baltimore, Maryland.
October 5, 1938.

Office of
Internal Revenue Agent in Charge

In re:
Years covered: 1936.

Mr. Robert E. Funkhouser,
5313 Colorado Avenue, N. W.,
Washington, D. C.

Sir:

This office is recommending to the Commissioner of Internal Revenue that your income tax returns for the year or years indicated be accepted as correct.

I am sure you will appreciate that this action is subject to approval in Washington, and also that should subsequent information be received which would materially change the amount reported, the Bureau is obliged under existing laws to redetermine your tax liability.

Respectfully,

J. C. WILMER
J. C. Wilmer,
Internal Revenue Agent
in Charge.

MK

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Baltimore, Maryland.
October 23, 1940.

Office of
Internal Revenue Agent in Charge
Baltimore Division

Mr. Robert E. Funkhouser,
5315 Colorado Avenue, N. W.,
Washington, D. C.

In re:
Date of Report: September 10, 1940.
Year(s) Examined: 1939.

Sir:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the Collector of Internal Revenue for your district.

Respectfully,

J. C. WILMER,
Internal Revenue Agent
in Charge.

Robert E. Funkhouser Year Ended 12/31/1939

SCHEDULE 1

Adjustments to Net Income

Net income as disclosed by return	$5,389.58
As corrected	5,389.58
Net adjustment as computed below	none
Net adjustment as above	none

SCHEDULE 1-A

Explanation of Items

All items of income and deductions were verified and found correct as reported in the return. Gross rents $41,667.71 was found correct as reported and included the amount of $2,575.54 reported on Form 1099 associated with the return. Interest paid $13,139.20 and Taxes $7,233.67 was found correct as deducted. Other deductions $15,905.26 consisted of repairs, insurance, water rent and miscellaneous expenses all of which were found to be allowable.

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Washington, D. C.
September 29, 1941

Office of
Internal Revenue Agent in Charge
Baltimore Division

In re: Review of personal income tax return for Year 1940

Mr. Robert E. Funkhouser,
5315 Colorado Ave. N. W.,
Washington, D. C.

Sir:

Your income tax return for the period above indicated has been referred to this office for verification.

It is possible that it would best serve your convenience to appear at the office of the undersigned as indicated below. If so, please bring with you such books, records and other data as were used by you in computing your income tax liability for the period involved, or which will assist this office in determining your taxable net income for the year in question.

It is particularly important that you have with you your record of work papers and books from which the return was prepared.

Please present this notice, and ask for Revenue Agent Jones. If you desire other arrangements, please return this notice immediately with your request therefor.

Respectfully,
J. C. WILMER,
Internal Revenue Agent
in Charge
By EDWIN SMITH,
Edwin Smith,
Internal Revenue Agent.

Bureau of Internal Revenue — Room 1042
Date Friday, Oct. 3, 1941 — Time 9:15 a.m.

TREASURY DEPARTMENT
OFFICE OF
COMMISSIONER OF INTERNAL REVENUE
Washington

Income Tax Unit
IT:C1:CC

Certificate of
Overassessment

Number: 1590353
Allowed: $6.97
Schedule No. 79003

Mr. Robert E. Funkhouser,
5315 Colorado Avenue, N. W.,
Washington, D. C.

Sir:

An audit of your income tax return, Form 1040, and a consideration of all the claims (if any) filed by you for the taxable year ended December 31, 1940 indicates that the tax assessed for that year was in excess of the amount due:

Assessed:	Income Tax
Account # 264191	$262.52
Correct Liability	255.55
Overassessment	$ 6.97

The overassessment shown herein results from the adjustment shown in a revenue agent's report, a copy of which report has been furnished you.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

T. C. Atkeson
Head of Division.

Abated: $6.97
Credited: $
To Tax. Year
Credited: $
To Tax. Year
Refunded: $
Interest: $

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Baltimore 2, Maryland
August 31, 1943

Office of
Internal Revenue Agent in Charge

In re:
Year(s) covered: 1941

Mr. Robert E. Funkhouser, and
Mrs. Eleanor E. Funkhouser
5315 Colorado Avenue, N. W.
Washington, D. C.

Sir and Madam:

Upon examination of your income tax return(s) for the year(s) indicated above, the conclusion has been reached that it (they) should be accepted as filed.

I am sure you will appreciate that should subsequent information be received which would materially change the amount reported, it will be necessary under existing laws to redetermine your tax liability.

Respectfully,

J. C. WILMER,
Internal Revenue Agent
in Charge.

CEW

Respondent disallowed for the assessment of these taxes and penalties all expense items questioned by the Special Agent and the Intelligence agent.

Respondent testified to this in his testimony before the Tax Court on March 16, 1955 as follows.

Official Report of Proceedings Before the Tax Court of the United States
Docket No. 48119

[TC. Page 40*]

LLEWELLYN A. LUCE was called as a witness for and on behalf of Respondent, and having been duly sworn, was examined and testified as follows:

* * * *

[TC. Page 49]

"The bureau refused to concede any of those items that had been labeled by the special agent and the intelligence agent as fraudulent items, although they were discussed."

* * * *

Respondent's special agent, Charles H. Knight, testified that he worked extra-hours on this case to supplement his family income. He testified in,

United States District Court for the District of Columbia
Civil Action No. 4626-47
Knight vs. Knight

[TC. Page 27.]

By Charles H. Knight: "That on the night of November 7, 1947, when the defendant (Charles H. Knight) returned home about 11:00 P.M. from working late on an extra-hours job he had taken for the purpose of supplementing the family income ..."

* * * *

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* This petition makes reference to the following: The briefs filed in the Court of Appeals for the Fourth Circuit as certified by the Clerk of that Court. The testimony of Respondent's agents and witnesses before the Tax Court (TC .) and the testimony of the special agent and the intelligence agent before the United States District Court for the District of Maryland in Criminal Case No. 21794. (TR .) All references are to the page number of the official transcript. References to the other materials are specifically descriptive.

And this special agent testified as follows as to the kind of examination he made, and the kind of items he disallowed, in his testimony before the

United States District Court for the District of Maryland
In United States vs. Robert E. Funkhouser
Criminal Case No. 21794

[TR. Page 1]

CHARLES H. KNIGHT, was called as a witness for and on behalf of the Government, and having been duly sworn according to law, was examined and testified as follows:

* * * *

[TR. Page 342]

By Mr. Anderson:

Q. Now, this investigation of Mr. Funkhouser, approximately when did you start?

A. I contacted Mr. Funkhouser on November 10, 1947, as I recall.

Q. Now, prior to November 10, 1947, how long, if at all had you been investigating Mr. Funkhouser?

A. Maybe a few weeks, a couple of weeks, I would say. * * * I finally contacted him on November 10th in Mt. Rainier.

Q. Whereabouts?

A. On Rhode Island Avenue at a place where his car had been parked.

Q. Well, how did you happen to meet him at his automobile on Mt. Rainier Avenue?

A. Because, as I said before, for two or three weeks we had made what we called a preliminary examination. I had ascertained the identity of his car and license number, and I found such car there on Rhode Island Avenue, and I waited until he returned to the car.

Q. But you never wrote him any letter requesting an appointment?

A. No, sir.

• • • •

[TR. Page 347, line 1.]

Q. And at that time did Mr. Funkhouser turn over to you his books?

A. He turned over to me some of his records, yes, sir.

Q. Did he turn over to you his ledgers?

A. Yes, sir.

Q. Check stubs?

A. Yes, sir.

Q. Cancelled checks?

A. That is correct.

Q. How about any other records that he had?

A. I think he also gave me some records pertaining to his rental income or rental receipts, which were bound with, as I remember a couple of bolts or something to that effect. They were very thick and more or less in the size and shape of a receipt.

Q. He turned all of those over to you voluntarily?

A. By request, yes, sir.

Q. Now, did you talk with Mr. Funkhouser at that time as to whether or not he had anyone to assist him in making out his return?

A. I did, sir.

Q. What did he tell you?

A. I asked if he had an accountant or had anyone who had assisted him. He said he did not have an accountant. He said frequently he had inquired of knowledge at the Collector's office, and I believe he also stated Revenue Agent's office. I asked him if he could—whether it was on this particular occasion or not, Mr. Anderson, I wouldn't want to be held responsible, but in this one or a subsequent interview I did ask him that specific question, and he stated that he had consulted the Revenue Agent's office or the Collector's office, but he was never at any time able

to furnish me with any of the names of the officers at the Revenue Office.

Q. Did he show you any letters that he had received from the Bureau with reference to his returns?

A. It seems that I did see one, but I am not certain, Mr. Anderson. I wouldn't like to say definitely.

Q. Do you recall whether it was more than one?

A. I only have knowledge of seeing one. He did show me one, I belive, but this was, I think, quite old, as I remember it. In fact, it was for some years prior to these that we were investigating, as I recall, sir. I wouldn't like to be responsible for this answer, testifying from memory.

Q. Did it contain the name of the person whom he had contacted at that time?

A. I believe it did, yes, sir.

Q. Did you contact that gentleman?

A. I believe I did try to contact this fellow, but off hand I don't remember the name. I did endeavor to reach some one who had some connection with Mr. Funkhouser.

* * * *

Q. Did you consult the file of the Collectors office of the Bureau of Internal Revenue agent's office?

A. No, sir.

Q. Did you consult the files of the Collector's office of the Bureau of Internal Revenue or the agent in charge?

A. No.

* * * *

Q. And you say you made an investigation to ascertain who the gentleman was whom Mr. Funkhouser had contacted?

A. I did. I endeavored to find some of the agents or deputies whom he had spoken with.

* * * *

Q. Did he tell you who suggested that he set up his books in that manner?

A. He might have.

* * * *

By the Court: I have heard no complaint of the method of bookkeeping. The criticism of the Government is that the expenses as charged were not deductible. Now that is the issue in the case so far.

[TR. 10]

Questions By Mr. Green:

Q. Well, now, Mr. Knight, on the occasion of either your first or your subsequent meetings with Mr. Funkhouser, did you ask him for his books and records?

A. Yes. On this initial meeting with Mr. Funkhouser, I asked him if he had, since he had made reference to records which he had, when he was asked about his various properties, about the various mortgages on his property, and he stated, his answer would be, as per records, as per records. So, after we had completed this interview, also after we had inventoried his safe deposit box, Mr. Funkhouser accompanied us to his home over on 5315 Colorado Avenue in which he furnished us with the canceled checks, his check stub books and, as I recall, two bound volumes of books which contained the years 1941 to October of 1946, to the best of my recollection. Now, these books were given to me by Mr. Funkhouser and, in fact, it was so voluminous at the time he furnished them that at the time he furnished us with a suitcase in which to carry these to the office in.

* * * *

[TR. 19]

Q. Now, Mr. Knight, did you make photostatic copies of the Ledger Books which Mr. Funkhouser gave you?

A. Yes, for each year, Mr. Green.

Q. Now, I hand you certain sheets, and ask you if that is a photostatic copy of Mr. Funkhouser's Ledger for the year 1943?

A. Yes, sir, it is. He also furnished in addition a book what may be termed a reconciliation sheet. For instance, the checks shown here (indicating) for the purpose of making or preparing his income tax returns for the year 1943.

Q. Now, Mr. Knight, first let us describe this (indicating). Now, I think it is correct, that if each month is handled this way then it is handled the same for each year; is that not correct?

A. That is right.

* * * *

[TR. 20]

Q. Now, is it not true that down this column (indicating) there is a check number?

A. The check number issued by Mr. Funkhouser.

Q. And then immediately next to it appears to be the name of the payee of the check?

A. The payee, that is right, sir.

Q. And then, is it not generally true that immediately beside the name of the payee, is it not right, there is some notation indicating the purpose of the payment?

A. That is right, sir.

Q. And then there are four columns, one headed debt, the second headed property, the third headed interest, and the fourth headed maintenance, is that not correct?

A. That is right, sir.

[TR. 21]

Q. *And each of the payments represented by the listing of the checks is then entered in one* of the four columns; is that not correct?

A. That is correct, sir.

Q. *And then the last page has a listing of the receipts by month from each of the rental properties; is that correct?*

A. That is correct, sir.

* * * *

Question by the Court: I understand, Mr. Knight, that you say that this method of keeping accounts for tax

purposes, or for any other purposes, was consistant throughout all four or five of the years, from 1943 through 1947?

A. That is right, sir.

• • • •

[TR. 30]

Q. Now, Mr. Knight, did you ascertain from the records Mr. Funkhouser furnished you whether the figures appearing on his income tax return in 1943 were taken directly from the ledger which you have just identified?

A. That is true, sir.

Q. Were they, or were they not?

A. They were. They were taken from him.

Q. From the ledger?

A. From the reconciliation sheet that I have made reference to.

Q. Well, now, did Mr. Funkhouser give you a copy of the reconciliation statement?

A. Yes, sir, he did.

Q. And is this photostatic copy of the reconciliation statement, or analysis sheet, as it is entitled?

A. That is right, sir.

• • • •

[TR. 32]

Q. Now, what is the relationship between this analysis and the original books which the jury now have?

A. The checks, well, are the amounts shown on that book, the ledger sheet was brought forward and allocated further out to what actual expense Mr. Funkhouser has deemed it the actual heading.

• • • •

[TR. 33]

Q. In other words, then, is it fair to say that this analysis sheet, Government's Exhibit No. 45, is a more specific breakdown of all the expenditures shown under the general headings on the ledger?

A. Yes. These amounts were traced in each instance from the book to the analysis sheet.

* * * *

[TR. 34]

Q. Mr. Knight, is it true that at the bottom of the last page of Mr. Funkhouser's analysis sheet, he has totalled each column. In other words, he has the totals for taxes, interest, insurance, water, et. certera?

A. That is right. True.

Q. Now, are the totals appearing on the bottom of this analysis sheet the same totals that appear on Mr. Funkhouser's income tax return for the year 1943?

A. That is right, sir, those totals shown on the bottom of the analysis sheet are the same figures that are carried forward and made a part of Mr. Funkhouser's income tax returns for the year 1943.

THE 1944 RETURN

[TR. 140]

Q. (By Mr. Green) Now, Mr. Knight, did you receive from Mr. Funkhouser a copy of his ledger for the year 1944?

A. (By Mr. Knight) Yes.

* * * *

[TR. 142]

Q. Now, what he did was to list each check or each alleged payment he received in each of the four months and he broke them down into four headings and in the remaining months he broke them down into 12 or 15 columns; is that correct?

A. That is correct.

* * * *

Q. So he kept a running total of the expenses throughout the year?

A. Yes.

Q. Now, at the end of the year did he total each expense column?

[TR. 143]

A. That is correct.

Q. Now, would you look at the totals at the end of each expense column in those books and compare them with the total of his expenses which went into the 1944 return?

The Court: Well, he has probably done all that.

The Witness: That is correct.

The Court: Just say yes.

The Witness: Yes, yes, Your Honor.

Q. (By Mr. Green) The books tie in with the tax return?

A. That is correct.

Q. The expenditures shown on the books ultimately comprise the totals which went on the tax return?

A. Yes, sir.

Mr. Green: Would your Honor care to see the 1944 return?

The Court: Yes, I would.

(Paper was handed to the Court)

The Court: Well, I see that this is pretty much in the same form as the 1943 return.

It lists several properties and includes on the last column on that page gross income or rentals from each of the properties—at least I assume that is what it purports to be—and then in a similar column it has under the heading [TR. 144] the maintenance expenses which he deducted, making the total gross receipts $68,000 plus and the expenses $70,000 plus with a loss stated of $1700 or something like that.

Now, your problem is with the items here under the head of maintenance, isn't it?

Mr. Green: That is correct, sir.

The Court: Do you want to show it to the Jury?

* * * *

THE 1945 RETURN

[TR. 176]

Q. (By Mr. Green) Now, Mr. Knight, with regard to the year 1945, did you receive Mr. Funkhouser's ledger from him as part of the books and records he turned over to you?

A. I did, sir.

Q. I hand you this photostatic copy, and ask you if this [TR. 177] is a copy of Mr. Funkhouser's ledger, and the one which you received from him, for the year 1945, (handing paper to witness)?

A. It is, sir.

* * * *

Q. (By Mr. Green) Now, Mr. Knight, is it true that these 1945 books were kept in the same manner as the 1944 books, that is, along the right hand side there is a list of the payee, or supposed payee of the check, the check number, and then the amount that was expended? They were under various columns; taxes, insurance, water and so on and so forth?

A. That is correct, sir.

* * * *

[TR. 178]

Q. Now, did Mr. Funkhouser keep monthly totals, cumulative totals, for each month of all expenses?

A. That is correct, for each month.

Q. Have you got a final figure at the end of 1945 for his expenses?

A. That is correct, sir.

The Court: Then, they were carried into the income tax return the same way as they were for 1944?

The Witness: That is correct, sir.

The Court: Very well.

Do you want to put it in evidence?

Mr. Green: Here is the tax return, if Your Honor would like to see it. (Handing paper to the Clerk)

THE 1946 RETURN

[Tr. 206]

Q. (By Mr. Green) Now, Mr. Knight, did you receive Mr. Funkhouser's ledger for the year 1946?

A. I did, sir.

• • • •

Q. And is it kept in precisely the same fashion as the one for the year 1945?

A. That is correct.

• • • •

Q. Now, Mr. Knight, have you compared the defendant's ledger for the year 1946 with his income tax return?

[TR. 207]

A. I have, sir.

Q. The figures on the return come from the ledger?

A. That is correct.

THE 1947 RETURN

[TR. 262]

Q. (By Mr. Green) Did you receive from Mr. Funkhouser his ledger for the year 1947, Mr. Knight?

A. That is correct, sir.

[TR. 263]

Q. And when did you first receive that book from him?

A. On or about November 10, 1947.

Q. And did you subsequently return it to him so that he could prepare his 1947 income tax return?

A. That is correct, sir.

• • • •

[TR. 264]

Q. Now, Mr. Knight, Mr. Funkhouser's ledger for 1947 was similar to the ledgers for the prior years and kept in the same manner?

A. That is correct.

Q. Did you check the 1947 income tax return with the 1947 ledger?

A. I did, yes.

Q. Can you state whether or not the return was prepared from this ledger?

A. That is right.

Q. And is it true that the items of expense shown on the ledger for 1947 ultimately did get into the income tax return of 1947?

A. Yes.

The Court: Well, it seems to be the same general principle.

Petitioner's Reported and Respondent Admitted He Found All Gross Income Reported

[TR. 355]

Question by Mr. Anderson: "You made an investigation as to all of the businesses Mr. Funkhouser was in?"

Answer by Mr. Knight: "To the best of my knowledge, yes, sir."

Question by Mr. Anderson: "And as to the sources of his revenue, do you recall finding those in Mr. Funkhouser's records?"

Answer by Mr. Knight: "The rental income and the interest income and the salaries received from the Independent Laundries for the year 1943."

Question by Mr. Anderson: "So that what the Court said, is it not the point that there is no hidden income but the alleged improper deductions?"

Answer by Mr. Knight: "That is correct."

* * * *

Respondent Made No Audit of the Books and Records

[TR. 23]

Question by the Court: "Well, now, have you made any tabulation? I do not think it is at all necessary, I am merely inquiring as to whether you have made any tabula-

tion of what his aggregate amounts are for that year, which appear on these books. That is to say, if his gross receipts were seventy thousand dollars, and his expenses were, say, sixty-nine thousand dollars, what amount of that sixty-nine thousand of expenses was not represented by available vouchers, or papers, or receipted bills?"

Answer by Mr. Knight: "No, sir, we have not made such calculation."

Question by the Court: "Well, in that same connection, coming closer to the papers that the jury have before them, taking the first sheet of the tabulation called 'Government's Contentions' for the year 1943 we find that the gross income is put at $60,818.34, and operating expenses were $52,424.12. Have you made any tabulation for that whole year of how much of the fifty-two thousand is not represented by a check, or by invoice, or by any bill, or anything like that?"

Answer by Mr. Knight: "No, sir, we did not."

* * * *

The agent made no inquiry about the particular items

[TR. 44]

Question by the Court: Well, do you remember just what he said, what words he used? You have given us the substance of your recollection that he admitted it was a duplication, but did he give you any explanation of how the duplication occurred?

Answer by Mr. Knight: "I can't say just exactly what the exact words were. I did call his attention in the various interviews to the specific checks, but whether I did in this particular one, I am not sure, Your Honor."

* * * *

The agent made no inquiry about the specific checks

[TR. 382]

Question by Mr. Anderson: Now, Mr. Knight, the checks that I have just mentioned are similar to the other checks which make up the item of $3,784.99; is that not correct?

Answer by Mr. Knight: That is correct.

Q. Now, what did Mr. Funkhouser say to you about those checks and this item?

A. The $3,784.99?

Q. Yes, sir, if you had a conversation with him about it.

A. Now, as to each of these specific checks, I won't say I had conversations with him.

Q. I am not talking about these specific checks individually but the transactions as such.

A. As shown on his record there, it indicated it was paid expenses incurred by the laundry.

Q. Did you question him about those expenses?

A. I wouldn't say that I questioned him about these specific checks, no, sir.

* * * *

The agent disallowed all automobile expenses

[TR. 406]

Question by Mr. Anderson: "Mr. Funkhouser did use his automobile to get around to his business property. Did he not?"

Answer by Mr. Knight: "His contention was that he did. Yes, sir."

Question by Mr. Anderson: So you refused to allow it anyhow?"

Answer by Mr. Knight: "I refused to allow them in the entirety, yes, sir."

* * * *

The agent disallowed items never expensed

[TR. 193]

Question by Mr. Green: "Well, the next item is 'Purchase of forty shares of Prince George's Bank and Trust Company'. Was that reflected on Mr. Funkhouser's books, that payment of $800.00?"

Answer by Mr. Knight: "That is correct."

Question by the Court: "Then how is it charged on the Income Tax return?"

Answer by Mr. Knight: "As Miscellaneous Property expense."

* * * *

Respondent's agent testified that he had disallowed checks for depreciable items but he had allowed no depreciation on those items

[TR. 172]

Question by Mr. Green: And most of the 34 checks were drawn to one of those two auctioneers; is that correct?

A. Most of them were.

Q. And for what were the checks written?

A. They were charged to maintenance expense, or property improvements in all instances.

Q. And you know for what purpose payments were made?

A. As far as I could ascertain, it was for the purchase of furniture for apartments, or for the taxpayer's private home, or private summer home.

Q. Now, you have testified before, have you not, that some time during the war when rent controls were in operation that Mr. Funkhouser rented numerous furnished apartments; is that right?

A. That is correct.

Q. Now, what is your contention that Mr. Funkhouser should have done with these 34 payments totalling $4,700?

A. They should have been capitalized as an asset and recovered through depreciation.

* * * *

[TR. 416]

Question by Mr. Anderson: "Mr. Knight, to go back for a moment. The furniture, which Mr. Funkhouser purchased for his different furnished apartments from time to time, do you remember testifying to that?"

A. "Yes, sir."

Q. "Did you at any time allow him any depreciation for that?"

A. "No. No such allowance was made in this computation. Exceptions were made as to how they were deducted on his records, as shown in his records and in his income tax returns."

Q. "Now, in his records and in his income tax returns, does he show any depreciation on that property?"

A. "To the best of my memory, there is no such deduction made for depreciation of furniture on his returns, no, sir."

Q. "Does he claim any?"

A. "To the best of my memory, there is no such deduction made for furniture on his returns, no, sir."

Q. "Well, now, did you in determining whether any tax was due, did you include in your computation any depreciation on this furniture that was purchased by Mr. Funkhouser?"

A. "No, sir we didn't calculate depreciation on his furniture."

Respondent's agent knowingly testified falsely as to the date of the saleof the largest piece of property involved

[TR. 5]

Statement by Mr. Knight: "However, he stated that he sold the propety in 1944. 1944 is the date which he gave me at the time of the interview and subsequently investigation disclosd that it was sold, or occupancy of the laundry was tansferred to Mr. Abe Schnider in October of 1943."

* * * *

That testimony as to the Petitioner's contentions as to the date of the sale of the laundry was false, and was known to be false by the agent when he so testified. It is proved to be false by the agents own testimony 334 pages later when hewas trying to emphasize another point.

* * * *

[TR. 339]

Question by Mr. Green: "Now, Mr. Knight, just before we stopped for the recess, you testified, I believe that in one of your interviews with Mr. Funkhouser he told you that in 1943 he sold the laundry to Mr. Schnider. Now, are those Mr. Funkhouser's words?"

Answer by Mr. Knight: "In one interview that was his exact words, that the laundry had been sold in October of 1943."

Question by Mr. Green: "Approximately when was that interview, Mr. Knight?"

Answer by Mr. Knight: "Well, as I say, the first interview was November 10th of 1947."

Question by Mr. Green: "I mean the interview at which he told you that this laundry property had been sold, when was that?"

Answer by Mr. Knight: "That was probably April of 1948 and November 10th, 1947. In both those interviews he related that the laundry had been sold, furnishing me the name of the purchaser."

Question by Mr. Green: "Subsequent to those statements did Mr. Funkhouser say anything to you about this sale?"

Answer by Mr. Knight: "I didn't ask him specifically about the sale."

* * * *

Respondent's special agent knowingly testified falsely as to petitioners' contentions as to the use of some of the property

* * * *

[TR. 95]

Question by Mr. Green: "Now, the next items, Mr. Knight, are classified as 'equipment and supplies for Larramore'. Now, what is Larramore?"

Answer by Mr. Knight: "Larramore is the name of the summer estate of Mr. Funkhouser located on the South River, as he stated to me."

* * * *

[TR. 96]

Q. "Have you ever been there?"
A. "Yes, I have."
Q. "Can you give us the year?"
A. "Approximately in 1949."

* * * *

[TR. 97]

Q. by Mr. Green: "What was there? What buildings were there?"

A. "On entering, as I said, after getting into there or going through the gate, to the right, in Arms Creek, there is a boat house, and then you have a big house, which I might refer to as the larger house on the property, and after leaving there I was again down by another house, that is known as the tenant house, and at that time it was being remodeled, made over, and there is still another house on the property, I understand."

* * * *

[TR. 99]

Question by Mr. Green: "Now, Mr. Knight, what else if anything did you observe when you visited this place you referred to? (Approximately in November, 1949) Did you observe any crops growing or animals of any kind?"

A. "As I recall there were no crops to my knowledge that I recall offhand."

Question by the Court: "Was the seventy acres wooded or not?"

Answer by Mr. Knight: "Yes, I might say, I would say that from my observation the land is wooded because it is on the South River, and you can see that on the north side, Arms Creek is on the south side, and you enter in from a private beach, I mean it is made up of private owners who have bought lots in there and they divided it into beach lots."

Question by the Court: "How many front feet of water-front does he have?"

Answer by Mr. Knight: "I can't estimate it, Your Honor."

Question by the Court: "What is the depth of the water there at the shore?"

Answer by Mr. Knight: "The depth of the water I would say in Arms Creek, I can estimate it would be more shallow than out in South River there. Arms Creek does feed into South River which is navigable."

The Court: "Well, I think you have the description of the particular item which would seem to make the thing relevant. The next item, Mr. Green, what is that?"

* * * *

[TR. 101]

It can be covered without so much detailed reference, and I don't think anybody has the idea that the witness is making up figures out of his head or anything of that kind.

* * * *

[TR. 104]

Question by the Court: "Do you know for what purpose this was acquired in 1943?"

Answer by Mr. Knight: "It was during all the interviews with Mr. Funkhouser, the original interview and many other interviews we had which he stated it was his summer home on South River."

* * * *

[TR. 104]

Question by Mr. Green: "Did Mr. Funkhouser ever contend to you at any time during your investigation that prior to the time of the investigation he had acquired to subdivide this property or build houses there or anything of that kind?"

Answer by Mr. Knight: "No, he didn't contend that, sir."

* * * *

[TR. 105]

Question by the Court: "Well, if the property was acquired for business purposes, as I recall the law on the

matter, and if the expenditures were for business purposes, then they are deductible as business expenses if they are properly classified or indicated on the return. If however, they were merely for a summer home, that would not be so deductible; is that right?"

Answer by Mr. Knight: "That is right, Your Honor."

Respondent's special agent Charles H. Knight knew that he was testifying falsely as to Petitioner's contentions as to the use of this property. Here is a copy of Petitioner's answers to the special agent's questions at two formal interviews held by the special agent in his office in the Internal Revenue Bureau. The answers were made under oath administered by the special agent.

THE ORIGINAL INTERVIEW

1. Formal interview of April 12, 1948 in the office of special agent Charles H. Knight

Testimony of Mr. Robert E. Funkhouser, of 5315 Colorado Avenue, N. W., Washington, D. C., taken in the Office of the Intelligence Unit, Bureau of Internal Revenue, Building S, Washington, D. C., at 9:15 a.m. April 12, 1948, in the matter of his income tax liability to the United States.

Present: Mr. Robert E. Funkhouser (Taxpayer)
Mr. Charles H. Knight, Special Agent
Mr. Edward A. Conroy, Jr., Auditor and Accountant
Recorder: Miss Nina J. Hansen

Questions were asked by Special Agent Knight and answers made by Mr. Funkhouser.

Q. Mr. Funkhouser, will you please stand and raise your right hand? Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

* * * *

[Page 4]

Q. You bought a farm on the South River from Mr. Ogilby, known as the Wilmer Estate, I believe; how much did you pay for that, sir?

A. $25,000.00.

Q. That is your summer home?

A. No. I bought it intending to develop it as a waterfront development.

Q. But you do maintain a summer home there?

A. No. I am there very little.

Q. When was it purchased?

A. In 1939.

THE SECOND INTERVIEW

2. Formal interview of August 12, 1948 in the office of special agent Charles H. Knight

Interview regarding the income tax liability of Mr. and Mrs. Robert E. Funkhouser, for the years 1941 to 1947, inclusive, held in the Office of the Intelligence Unit, Temporary Building "S", Sixth Street and Jefferson Drive, S. W., Washington, D. C., at 2:00 p.m., on August 12, 1948.

Present: Robert E. Funkhouser, Taxpayer
Mrs. Robert E. Funkhouser, Taxpayer
John Berg, Accountant
Paul S. Harab, Accountant
Charles H. Knight, Special Agent
A. L. Hannum, Internal Revenue Agent
Helen W. Brown, Recorder

Questions were asked by Special Agent Charles H. Knight, and answers were given by Mr. Funkhouser, unless otherwise specified.

Q. Mr. and Mrs. Funkhouser, will you please stand and raise your right hand? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

A. Mrs. Funkhouser. I do.

A. Mr. Funkhouser. I do

* * * *

[Page 10]

Q. For what purpose did you use your first boat?

A. Mr. Knight, I bought 75 acres of ground on the water front, about a mile of water front, and I intended to develop that ground as water front development and I thought a boat would be helpful in promoting it.

Q. When did you purchase this land, this acreage you refer to?

A. I think it was in '39.

Q. Was that the Wilmer Estate?

A. Yes.

Respondent disallowed many thousands of dollars of expenses listed on the returns and confused the Jury with testimony such as the following:

* * * *

[TR. 207] Question by Mr. Green: Now Mr. Knight, will you look at the December page of Mr. Funkhouser's books for 1946.

A. Yes, sir.

Q. Now, I call your attention, particularly, to the column of miscellaneous property.

A. Yes, sir.

Q. What is the final figure in that column?

A. $7,053.95.

Q. Now, is that the figure that appears on the tax return?

A. That is correct, sir.

* * * *

Q. It is shown as a deduction in that amount?

A. It is shown on the taxpayer's income tax return. No, that is maintenance expense. Your Honor.

Question by the Court: Well, what would be the ordinary significance of miscellaneous property as a heading for deductions? I do not quite get that.

Statement by Mr. Green: I am sure I don't either, sir, to be honest with you. I don't know what he had in mind there.

Statement by the Court: Well, all right, go ahead and develop whatever point you have in mind, Mr. Green. Maybe we will understand it as we go along.

Q. However, Mr. Knight, is that figure that is shown on the books, on the return, as $7,053.95, as miscellaneous property deduction for 1946 the final twelve month figure as shown on the books?

A. That is right, the total, the final total, as shown on the books for the year 1946.

* * * *

[TR. 210]

Q. Now, how were you able to determine the source of that figure?

A. By going back and noting the ones which he had crossed off his records, and that amounts to a total of—that amount comes to $3,814.50, which he deducted from the $10,868, and arriving at $7,053,95.

Q. I don't quite understand what you mean. You mean he listed certain expenditures, or included certain expenditures, under the heading of miscellaneous property and then at the end of the year struck them out; is that correct?

A. That is correct, sir.

Q. Now, how many expenditures did he strike from the miscellaneous property column?

A. I can't say off hand except referring to approximately four, three or four—there were three, I think, to be exact, sir.

* * * *

[TR. 211]

Q. By the Court: Now, what is the significance, then of the matter?

A. By Mr. Green: My point is this, sir, with regard to this column, and to the other columns at the end of the year. Mr. Funkhouser ascertained that certain expenditures totaled $11,500 which heretofore had been included as expenses but should not be taken as expenses and, therefore, instead of showing a loss of some ten thousand dollars he showed a profit of $1,400 at one time.

Q. By the Court: He showed a loss of ten thousand dollars?

A. By Mr. Green: Instead of showing a loss of ten thousand dollars at the end of the year, he allotted certain expenditures as deductions, and he would have shown a loss of ten thousand dollars.

* * * *

[TR. 312]

Q. By the Court: Well, you say it is only part of your argument, but that is the only significance that I can see in any of it at the moment.

A. By Mr. Green: I say this, and like I mentioned to the jury in my opening statement, each of these items will be taken in conjunction with all the others. That must be done in order to get the significance of each and every item.

* * * *

[TR. 221]

Q. Now, Mr. Knight, the importance of that point you just testified to is that there were four entries in the miscellaneous column crossed out?

A. That is correct.

Q. Now, what is the total amount crossed out?

A. $4,315—$4,160 have been crossed out.

Q. $145 less than the $4,305 which was deducted; is that correct?

A. That is correct.

Q. Now, is it not true that several checks were—

Mr. Anderson: If Your Honor please, I don't think this proves anything. The figures are not corresponding in any way, and I don't think it proves anything.

The Court: Perhaps Mr. Green may help us by telling us the significance of these matters. I do not myself get them. I doubt that the jury does, but it may be that it is the basis of something later on.

By Mr. Green: If Your Honor please, we contend this: that in the year 1946 the taxpayer reported a net income of $1430, and then ascertaining what the expenses were he had a $1400 difference, and he deducted from the total expenses as shown by the books as shown at the end of the year the sum of $11,500, and I say two things, that when you look back to see which expenses were crossed out for the time in enumerating the deduction, it is indicated that at one time he was going to take off as expenses, but then he changed his mind particularly when he found that if he included them as expenses it would show a net loss for the year of some $10,000.

By the Court: Of course, that is an argument based on your conception of his mental intention. It is quite possible that there may be evidence that they were crossed out because he ascertained that they were mistakenly put there in the first instance. That would be the ordinary interpretation of it, apart from other evidence in the case which might lead to one being suspicious about the matter. I thought possibly you were going to make the point which perhaps is argumentatively open in the case that the items which have been crossed out are very, very similar to items which in other years have been crossed out, and that possibly requires some explanation as to the fact that they were included as deductions in 1945, and have been eliminated as not a deduction properly in 1946. You could argue that perhaps there is an inconsistency in that respect. That is all I see for the moment in the case, but

you have got these checks, whatever their significance is, before the Jury. Now let us go on to something else.

* * * *

Respondent just assumed that some taxes were due and so testified

[TR. 493]

Archibald L. Hannum, was called as a witness on behalf of the Government, and having been first duly sworn, was examined and testified as follows:

[TR. 493]

Q. Now, for the year 1943, Mr. Hannum, both the indictment and the Government program shows a corrected net income for Mr. Funkhouser of $14,467.57. Now, assuming that to be a correct income, have you computed the amount of tax that would be due and owing on that income for 1943?

A. I have.

Q. What is that amount, Sir?

A. $4,294.90.

Q. Now, in the year 1944, Mr. Hannum, the indictment alleges that Mr. Funkhouser had a correct net income of $16,533.00. Now, assuming that to be his correct income, have you computed the amount of tax due and owing from him?

A. On the $16,000.00?

Q. Yes.

A. On $17,000.00 I computed it. Isn't that your program?

Q. Now, assuming his correct income was $16,533.00, as alleged in the indictment for 1944, could you tell us what the tax due and owing on that amount would be?

A. I can.

Q. What is that amount?

A. $5,452.20.

Q. Now, the Government program for 1944, Mr. Hannum, shows a corrected net income of $17,649.19. Assum-

ing that to be correct, have you computed the tax that would have been due and owing thereon?

A. I have.

By the Court: Now you are confusing me. I do not know what you are talking about for the moment. You mean it changed between 1944 and 1945?

By Mr. Green: If Your Honor please, in 1944, 1946 and 1947 the figures shown on the Government program as a corrected net figure are slightly different from the figures stated in the indictment, and I was asking Mr. Hannum's tax computation of both the indictment figure and the figure appearing in our score sheet.

Respondent gave petitioner a bogus list of the questioned items for petitioners use in preparing for the criminal trial

[TR. 423]

Q. By Mr. Anderson: Now, Mr. Knight you were asked a long series of questions with respect to the allowance of interest and principal on certain mortgages of Mr. Funkhouser, and I show you a copy of the computation for the year 1943 which I believe you have.

A. That is correct, sir.

Q. Now, for example, in the year,—Well, I direct your attention to the Electrical Workers Benefit Association.

A. That is correct, sir.

Q. You have certain items in brackets. What is the significance of the brackets?

By Mr. Green: If Your Honor please, I don't mind Mr. Anderson asking any questions he wants to but the paper he has reference to is a preliminary work paper which I gave to him in connection with both mine and his preparation of the case and I don't think it is appropriate for him to use that in connection with the questioning of Mr. Knight, particularly in view of the fact ..."

By the Court: "Who gave what to whom? You gave what to whom?

By Mr. Green: "I gave to Mr. Anderson that and particularly in view of the fact that Mr. Knight didn't utilize a copy of it in connection with the basis of his testimony—"

By the Court: "Well, Mr. Anderson, I understand that you are asking him what is the significance of some notation on the paper which Mr. Green handed to you."

By Mr. Anderson: "I thought it had some significance a notation on the paper that was turned over to me and Mr. Knight."

By the Court: "I sustain the objection."

This entire case was handled by respondent's special agent, Charles H. Knight, and petitioner was continually referred to that agent for over seven years

Here is a copy of a letter referring Petitioner back to Charles H. Knight seven years after that agent began this case. It like all other inquiries was referred to this agent whose testimony has been quoted and who,

1. Made no audit or inquiry about former audits. [32a][1]
2. Made no tabulation or calculation. [32a]
3. Disallowed all automobile expenses in the entirety. [33a]
4. Made no inquiry about the particular items. [32a]
5. Assumed that taxes were due. [45a-46a]
6. Secured a fine and conviction on that assumption.
7. Opposed petitioners release from prison on parole after petitioner had served enough time in prison to become eligible for parole on the ground that petitioner had not paid his "assessed taxes" when he well knew that no taxes had been assessed. [Record of Parole Board]
8. Filed the tax liens and jeopardy assessments. [48a]
9. Seized and took all of petitioner's property and money without making any audit or tabulation or assessment. [32a]
10. Testified falsely as to date of sale of some of petitioner's property. [35a-36]
11. Testified falsely as to petitioner's contentions as to the use of some of the property. [36a-41a]
12. Worked overtime on the case "to supplement the family income". [20a] But Petitioner was referred to that same agent for over seven years.

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[1] All References are to pages of this appendix.

U. S. TREASURY DEPARTMENT
OFFICE OF THE DIRECTOR OF INTERNAL REVENUE
Washington, D. C.
March 4, 1954

Mr. Robert E. Funkhouser,
5315 Colorado Ave. N. W.,
Washington, D. C.

In re: Robert E. Funkhouser, et ux.,
Docket No. 48119

Dear Mr. Funkhouser:

Reference is made to your recent letter addressed to the Commissioner of Internal Revenue requesting information as to the amount of collections made on the accounts against you and the basis on which jeopardy assessments were made for the years 1941 through 1947.

The writer has furnished you with a memorandum of each payment received on your accounts with the exception of the two enclosed with this letter which were received March 4, 1954. The total amounts to $30,565.47 and has been credited as shown below.

1941 IT. Spl. 11 OOP 12/5/52, Tax $7,608.55 Interest $338.38 Total $7,946.93.
1942 IT. Spl. 1102P 12/6/52, Applied against tax $22,618.54, Liability $32,071.85.

If this does not agree with your records I shall be glad to check each collection with you upon your call at our office, Room 1116, Int. Rev. Bldg.

The matter of the jeopardy assessments should be taken up with Special Agent Charles H. Knight, Internal Revenue Building, Washington, D. C., his file SI-33405-P.

Yours very truly,

JAMES F. PHILLIPS
James F. Phillips,
Collection Officer.

To force this settlement respondent contended that he was disclosing basis of assessment

U. S. TREASURY DEPARTMENT
OFFICE OF THE DIRECTOR OF INTERNAL REVENUE
Washington 25
Feb. 15, 1955

Mr. Robert E. Funkhouser
5315 Colorado Avenue, N. W.
Washington 11, D. C.

Dear Mr. Funkhouser:

This is in reply to your letter of February 6, 1955, addressed to Assistant Commissioner Webster, in which you request the Internal Revenue Service to furnish you certain lists or other data bearing upon the determination of your income tax liability for the years 1941 through 1947. These years were closed by a stipulation filed in the Tax Court in your case, bearing Docket No. 48119.

As was stated to you during the recent conference held here in the office of the Appellate Division, at which your representative, Mr. Warren Roberts, was present among others, complete data showing how your liability was arrived at is in possession of your counsel of record. Furthermore, your counsel of record always has had this information, since it was the basis upon which Mr. Llewellyn Luce and Mr. Roberts, representing you, worked out the settlement of the case with respresentatives of the Internal Revenue Service.

Under these circumstances, your proper course of action would be to make arrangements to secure the material you desire from your own counsel.

Very truly yours,

C. W. STOWE
Acting Assistant Commissioner
(Operations)

U. S. TREASURY DEPARTMENT
OFFICE OF THE DIRECTOR OF INTERNAL REVENUE
Washington, D. C.
March 4, 1954

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The matter of the jeopardy assessments should be taken up with Special Agent Charles H. Knight, Internal Revenue Building, Washington, D. C., his file SI-33405-F.

Yours very truly,

JAMES F. PHILLIPS
James F. Phillips,
Collection Officer.

To force this settlement respondent contended that he was disclosing basis of assessment

U. S. TREASURY DEPARTMENT
OFFICE OF THE DIRECTOR OF INTERNAL REVENUE
Washington 25
Feb. 15, 1955

Mr. Robert E. Funkhouser
5315 Colorado Avenue, N. W.
Washington 11, D. C.

Dear Mr. Funkhouser:

This is in reply to your letter of February 6, 1955, addressed to Assistant Commissioner Webster, in which you request the Internal Revenue Service to furnish you certain lists or other data bearing upon the determination of your income tax liability for the years 1941 through 1947. These years were closed by a stipulation filed in the Tax Court in your case, bearing Docket No. 48119.

As was stated to you during the recent conference held here in the office of the Appellate Division, at which your representative, Mr. Warren Roberts, was present among others, complete data showing how your liability was arrived at is in possession of your counsel of record. Furthermore, your counsel of record always has had this information, since it was the basis upon which Mr. Llewellyn Luce and Mr. Roberts, representing you, worked out the settlement of the case with respresentatives of the Internal Revenue Service.

Under these circumstances, your proper course of action would be to make arrangements to secure the material you desire from your own counsel.

Very truly yours,

C. W. Stowe
Acting Assistant Commissioner
(Operations)

But the settlement and stipulation was forced on petitioner without respondent disclosing the basis of the assessment of these taxes

Respondent's agent Butrum testified before the Tax Court

[TC 27]

Question by Mr. Waring: Will you state to the Court the basis of settlement of the item called property maintenance as briefly as you can?

Answer by Mr. Butrum: That was the error that caused the greatest amount of confusion. My instructions to the boys were to total all of these amounts in this account as to which there was a dispute as to whether they were legitimate expenses or whether they were ever any expenditures. The total of that was approximately $68,000. and realizing the enormity of attempting to analyze some 20 or 30 thousand individual items I told them we would adopt the theory of the cohen rule and split it down the middle.

* * * *

[TC 38]

Q. And each figure contained thereon with respect to the column marked "balance in dispute one hundred per cent", each of those items were discussed in the conference at which Mr. Funkhouser was present; is that correct?

A. That is correct. Now I personally didn't do this. My expression was "see that that is done and when you reach a point where you are unable to settle any more of these items let me have the total." And that was the problem that I was confronted with. This $68 thousand in dispute. "What shall we do then?" And I said "Split them down the middle," "Let us get rid of the case."

* * * *

[TC 34]

Q. By Mr. Funkhouser: Did you ever give me a list of any of the items that were disallowed in this case?

A. Mr. Funkhouser, I told you a number of times we did not give you any; neither do we intend to. We have a total of $68,000 in expense covering probably 10 thousand items. We say for purposes of settlement we will allow 50 and disallow 50. There is no attempt to pick out and say here is 5 thousand. Half of this total over here and allow you these; and another total over here to arrive at this figure. We take the total sum and apply in what in our judgment is a reasonable figure to apply.

[TC 37]

Question by Mr. Funkhouser: Have you ever given me any items—

Answer by Mr. Butrum: I have not given you any list of any items.

Q. Have I ever requested you to give them to me?

A. You most certainly have.

Q. And I have been refused?

A. Right.

Q. Have you ever given me any of those items?

A. I have not given you anything, Mr. Funkhouser.

And the counsel who signed the stipulation testified before the Tax Court

[TC 52]

Q. Mr. Luce, did you ever give me any list of the disallowed items in this case?

A. Mr. Funkhouser, I never had a list. What we gave you and what you looked over and what you prepared yourself, helped prepare, was this long analyses, prepared by Mr. Roberts in these conferences of these checks right down the line. Now I will tell you why I didn't give you a list: Because we had this analyses and in the second place because the government didn't give me any list; and as a matter of fact, they didn't have a list and didn't make it up and the settlement was finally effected as Mr. Butrum described it, by an arbitrary decision of these items in dispute. So I didn't have any list of them; I just had the figure.

Respondent told the Tax Court that he found all gross income reported and 95 per cent of all expenses were found allowable and were allowed. The official report of proceedings before the Tax Court. Docket No. 48119 Record

[TC Page 13]

By Mr. Waring: Counsel for Respondent: "This gentleman for the years involved in this proceeding reported a gross income of $492,991.10 on returns filed by him".

[TR. 355]

Question by Mr. Anderson: You made an investigation as to all of the businesses Mr. Funkhouser was in?

Answer by Mr. Knight: To the best of my knowledge, yes, sir.

Q. And as to the sources of his revenue, do you recall finding those in Mr. Funkhouser's records?

A. The rental income and the interest income and the salaries received from the Independent Laundries for the year 1943.

Q. So that what the Court said, is it not the point that there is no hidden income but the alleged improper deductions?

A. That is correct.

* * * *

[TR 21]

Question by Mr. Green: And then the last page has a listing of the receipts by months from each of the rental properties; is that correct?

Answer by Mr. Knight: That is correct, sir.

* * * *

Respondent found all expenses listed and reported in all years

[TR 264]

Question by Mr. Green: Now, Mr. Knight, Mr. Funkhouser's Ledger for 1947 was similar to the ledgers for prior years and kept in the same manner?

A. That is correct.

Q. Did you check the 1947 income tax return with the 1947 ledger?

A. I did, yes.

Q. Can you state whether or not the return was prepared from the ledger?

A. That is right.

Q. And is it true that the items of expense shown on the ledger for 1947 ultimately did get into the income tax return of 1947?

A. Yes.

The Court: Well, it seems to be the same general principle.

* * * *

[TR 353]

Q. By Mr. Anderson: Now, Mr. Knight, Mr. Funkhouser's check stubs contained an itemization of practically all these transactions; isn't that true?

A. That is correct, sir.

Q. In other words, the check stubs are the records which contain the detailed entries of the various transactions?

A. That is not correct in every detail.

Q. I didn't say it was correct, but I say it contained the detailed entries of the transactions?

A. Generally, yes, sir.

Q. And from the check stubs they are carried over into what has been called the ledger, and what I will call the same thing. From the check stubs there is carried over in a summarized form the breakdown of the check stubs into these categories as set forth in this expense ledger; is that right?

A. Generally, yes, sir.

Q. In other words, there would be summaries of these transactions set forth in the stubs of each detailed transaction which later was set up under the various headings in Mr. Funkhouser's ledger?

A. Generally, yes, sir.

And respondent told the Tax Court 95 per cent of the items were found allowable

[TC Page 14]

By Mr. Waring: "Every check that he was able to produce, and he produced 95 per cent of them, were itemized by numbers, were placed in various categories. Those were allowed. There is no question about it. They were allowed as deductions from gross income.

"Finally it came to the questionable items, all of which Mr. Funkhouser knew about, all of which were discussed in the conferences; all of which Mr. Luce knew about; all of which Mr. Roberts knew about. There was no hiding, no misunderstanding in those conferences.

This has been a most unusual case as evidenced by our office granting 20 conferences just in this one case. We had to do it because of the attitude of the petitioners at all times in this case. We would ask him to discuss a check on the back of which, at least in one case, was 59 items; and that check totaled about $300. They were all in his handwriting (R. 15)

What did these items represent? They go from 25 cents up to $400-some in some cases. I honestly believe that there is at least 10,000 income items in dispute in this case because of him and nobody else, represented by these 3,000 checks."

* * * *

Respondent never made up any list of the items disallowed

[TCR p. 22]

Roy Butrum, was called as a witness, by Respondent, and having been duly sworn, was examined and testified as follows:

* * * *

Direct Examination by Mr. Waring:

[TC 24]

By Mr. Butrum, it is seldom that I sit in conferences unless there is a dispute of some kind which would war-

rant my attending. And the reason I started on this one was that it was an old case, involving a substantial sum of money, and the Commissioner was desirous of eliminating these cases from our inventory prior to December 31. And when they started consideration of the case I was advised by Mr. Smith, Technical Advisor who was handling the case, that that was a very complex set of facts, and I agreed to assign him an order to assist him in reviewing the voluminous trial. When they told me what they had discovered I deemed it advisable that I sit in one or two of the conferences to determine what the possibilities were of effecting eventual settlement of the case.

* * * *

[TC 26]

Q. How many checks or various items do you believe were involved in this proceeding insofar as they related to property maintenance?

A. I don't know exactly how many were in dispute in the suit-case that I saw which contained the checks. There were approximately 7,000 I judge. Now, as to how many of those 7,000 were actually in dispute I am unable to state.

Q. While you were at the conference was every item in dispute discussed not only with Messrs. Funkhouser, Luce and Roberts, but were discused among the various people?

A. Every check number, and the accounts underlying it were discussed.

Q. And Mr. Funkhouser was fully advised with respect to each item, and he was the one who explained what they were issued for, wasn't he?

A. So far as those discussions occurred while I was present.

Q. Will you state to the Court the basis of the settlement of the item called Property Maintenance as briefly as you can?

A. That was the error that caused the greatest amount of confusion. My instructions to the boys were to total all of these amounts in this account as to which there was a dispute as to whether they were legitimate or whether they were ever any expenditures. The total of that was approximately $68,000.00. *And realizing the enormity of attempting to analyze some 20 or 30 thousand individual* items I told them we would adopt the theory of the Cohen rule and split it down the middle.

• • • •

[TC 34]

Cross Examination

By Mr Funkhouser:

Q. Did you ever give me a list of any of the items that were disallowed in this case?

A. Mr. Funkhouser, I told you a number of times we did not give you any; neither do we intend to. We have a total of $68,000.00 in expense covering probably 10 thousand items. We say for purposes of settlement we will allow 50 and disallow 50. There is no attempt to pick out and say here is 5 thousand. Half of this total over here and allow you these; and another total over here to arrive at this figure. *We take the total sum and apply in what in our judgment is a reasonable figure to apply.*

Q. Then this is just in your judgment a reasonable figure to allow?

A. That is right. This figure here, this thirty-four; 50 percent.

• • • •

[TC 35]

Q. What does this column mean? "Disallowed by Agent, other than Criminal Fraud", Totaling $103,720.21? What does that column mean to you?

A. These are the items that were disallowed by the Special Agent, or Revenue Agent, in addition to what he

designated as Criminal Fraud items in the Criminal proceeding.

Q. Have you ever given me any of those items?

A. I have not. We did not have the Criminal Case. We had nothing to do with the criminal prosecution.

Q. Mr. Butrum, what does this column headed "Criminal Fraud" mean to you?

A. *Well, I don't know why that column is in there at all. As a matter of fact; it is totally meaningless so far as our settlement was concerned.* Whether you were or were not guilty of fraud with respect to particular items in your Criminal Case, was no concern to me in settling your Civil Tax liability.

* * * *

[TC 37]

Q. Have you ever given me any items—

A. I have not given you any list of any items.

Q. Have I ever requested you to give them to me?

A. You most certainly have.

Q. And I have been refused?

A. Right.

* * * *

Q. May I ask you about one more column here. This column headed "Disallowed by Agent", What does that column mean to you?

A. Just exactly what it imports, that *those are the total amount disallowed by the Revenue Agent in his report.*

Q. Have you ever given me any of those items?

A. I have not given you anything, Mr. Funkhouser.

* * * *

[TC 38]

Redirect Examination

By Mr. Waring:

Q. Mr. Butrum, the figures shown on Txhibit 1, which you have in front of you, were obtained from a check analysis summary, were they not, sir?

A. That is right.

Q. And each figure contained thereon with respect to the column marked "Balance in Dispute 100%" each of those items were discussed at the conference at which Mr. Funkhouser was present; Is that correct?

A. That is correct. Now I personally didn't do this. My expression was "See that this is done and when you reach a point where you are unable to settle any more of these items, let me have the total". And that is the problem that I was confronted with. This $68 thousand in dispute. "What shall we do then?" And I said "Split them down the middle." "Let's get rid of the case".

The counsel who signed the stipulation never had a list of the disallowed items

[TC 40]

LLEWELLYN A. LUCE, was called as a witness for and on behalf of the Respondent, and having been duly sworn, was examined and testified as follows:

By Mr. Waring:

Q. You are attorney-at-law, are you not, sir?

A. Yes, sir.

Q. Did you have a client by the name of Robert E. Funkhouser, sir?

A. I did, sir.

Q. And did he employ you with respect to his income tax case, Docket Number 48119 relating to the years 1941-1947?

A. He did, sir.

Q. In connection with that case, will you tell the Court briefly what you did to develop the facts in that case, the conferences and discussions which you had with your client with respect to settlement negotiations? I will let you take it from there. You go ahead, sir.

A. Mr. Waring, I would like to develop this first if I may by a statement. You notified me that I would be

subpoenaed as a witness for the Government and then I agreed to come here without a subpoena at the request of the Government; is that right?

Q. That is correct, and I might state that for the record. I am sorry I did not do it. I told you very clearly that if you didn't volunteer to come I would issue a subpoena; and I had a subpoena already typed for your appearance here this morning.

A. I want to make further statement in the interest of Mr. Funkhouser, in the interest of myself, that I have no spleen against Mr. Funkhouser. As far as Mr. Funkhouser and I are concerned, we are friends. We had some very violent arguments a time or two; but I want to state to this Court that I represented Mr. Funkhouser the best I was able and to the full extent of my ability.

Now, Mr. Waring, I will answer your question stating this: You want an outline, what we did with respect to this case. Now, in the first place I prepared the petition in this case. I feel, as a lawyer, that a very comprehensive petition was prepared. I feel it was very satisfactory to Mr. Funkhouser. I prepared the answer, or reply, to the government answer.

I arranged with Mr. Butrum and yourself for this long series of conferences which were held, which I supervised. I employed Mr. Warren Roberts, attorney-at-law, who helps me in many of my cases, to sit in with the government representatives and with Mr. Funkhouser, to go over these checks with the government representatives check by check.

Mr. Funkhouser, at my request, and also in accordance with his own best judgment, segregated these checks year by year, these checks and other items, not checks, white slips, which made up a part of these miscellaneous deductions. These checks Mr. Funkhouser brought to my office. There were two or three suitcases full of these checks.

Then these deductions being in dispute, we went down with the Bureau representatives, Mr. Roberts went down

with Mr. Funkhouser and as far as possible went over with Mr. Smith and Mr. Able these checks, item by item.

Then I came into the picture and argued as best I could, and I was not mealy-mouthed about the proposition. I spoke right straight to the shoulder to the government representatives about the allowance of these checks. And there were other items which I think we should take into consideration.

Now you asked me what I did.

The deficiencies for all of these years, penalties, and 25 per cent penalties for the years 1941 to 1947 inclusive amounted to $272,521.19, plus interest. The taxes, interest, and penalties so proposed by the government were settled under this stipulation and agreement to stipulate for the figure of $107,955, a saving to the taxpayer, from the determination of the Commissioner; a saving amounting to $164,566.01. An actual reduction of taxes was made. I felt I had done a pretty good job.

* * * *

[TC 49]

Now Mr. Funkhouser was present at these conferences and explained, offered the testimony about the checks. It wasn't testimony under oath, but it was explanation.

Then with respect to these checks and other pieces of paper representing each transaction, I might make this clear as I get the picture: A portion of those, all the checks in dispute, had been disallowed by the examining officer on the ground that there were fraudulent items. *The Bureau refused to concede any of those items that had been labeled by the special agent, and Intelligence agent, as fraudulent items, although they were discussed.*

* * * *

[TC 51]

Now I agree with Mr. Funkhouser in this one respect—Well, in many respects, I agreed with him so completely that we got these answers that I describe. But I feel that this man has had an awful hard time. Those jeopardy as-

sessments were terrific. The subsequent attachment of his bank account was terrific. He has been under a strain ever since that criminal proceeding in Baltimore five or six years ago.

* * * *

[TC 52]

Now here is what I was afraid of: If he lost that case or lost some of these other issues, I was afraid it would break him.

* * * *

Cross Examination

By Mr. Funkhouser:

Q. Did you ever give me any list of the items that were disallowed in this case?

A. Mr. Funkhouser, I never had a list. What we gave you and what you looked over and what you prepared yourself, helped prepare, was this long analysis, prepared by Mr. Roberts in these conferences of these checks right down the line.

Now I will tell you why I didn't give you a list; because we had this analysis and in the second place *the government didn't give me any list; and as a matter of fact, they didn't have a list and didn't make it up and the settlement was finally effected as Mr. Butrum described it, by an arbitrary decision of these items in dispute. So I didn't have any list of them, I just had the figure.*"

[TC 55]

Warren G. Roberts, was called as a witness by and on behalf of Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Warring:

Q. Mr. Roberts, you are a member of the bar, are you not, sir?

A. I am.

Q. In connection with that association did you have occasion to work on the case of Robert E. Funkhouser, Docket No. 48,119, pertaining to the years 1941 to 1947, inclusive?

A. Yes, I did, Mr. Warring.

Q. Can you in a few words, to save time, tell the Court the scope of your authority with respect to this case, number of conferences held and your associations with Mr. Funkhouser personally in respect to the adjustments made in this case?

Now, you go ahead and I will take up from where you leave off.

A. Let me explain.

Q. Just before you do, I want to say for the purpose of the record, that I asked Mr. Roberts to appear and told him that if he did not appear that I would subpoena him. He told me that he would voluntarily come without a subpoena. That is the only reason he has not been subpoenaed as a witness for the Respondent.

Now, you go ahead.

• • • •

[TC 57]

The total number of items in dispute in this case I would judge to be about fourteen thousand items, most of them small.

• • • •

[TC 59]

There was a certain number of items that the agent had designated as Criminal Fraud items. Whether they were or weren't was not determined.

In any event, the Government would not give us any part of those, and my understanding was that they were disallowed in toto. That was that.

• • • •

Cross Examination

By Mr. Funkhouser

[TC 66]

Q. Mr. Roberts, did you ever get a list of the fraud items in this case?

A. Now, I must say that I never did get a list of them ... the answer to that is No.

Q. Did you ever get a list from the Government of the items that made up the fraud?

A. This not being a criminal trial, No, we didn't, and it didn't seem to be necessary, I might add.

Q. It wasn't necessary in your opinion?

A. No. And besides it wouldn't be furnished if we asked for it.

* * * *

[TC 69]

Q. Were you furnished by the Government with any list of items that had been disallowed as interest in those years?

A. No, there was no separate list of that given.

* * * *

Respondent told the Tax Court that he had found all of the gross income reported, that 95 per cent of all expenses were found allowable and were allowed, and that the other five per cent were reported in too much detail to count, list or attempt to analyze.

[TC 13]

By Mr. Waring: This gentleman for the years involved in this proceeding reported a gross income of $492,991.10 on returns filed by him.

[TC 14]

By Mr. Waring: *Every check that he was able to produce, and he produced 95 per cent of them*, were itemized by numbers, were placed in various catagories. *Those were*

allowed. There was no question about it. They were allowed as deductions from gross income.

Finally it came to the questionable items, all of which Mr. Funkhouser knew about, all of which were discussed in the conferences; all of which Mr. Luce knew about; all of which Mr Roberts knew about. There was no hiding, no misunderstanding in these conferences.

This has been a most unusual case as evidenced by our office granting 20 conferences just in this one case. We had to do it because of the attitude of the Petitioners at all times in this case. We would ask him to discuss a check on the back of which, at least in one case, was 59 items; and that check totaled about $300. They were all in his handwriting.

What did these items represent? They go from 25 cents up to $400-some in some cases. I honestly believe that there is at least 10,000 income items in dispute in this case because of him and nobody else, represented by these 3,000 checks.